

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT MARTIN MCCOWAN

Defendant-Appellant.

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UNPUBLISHED

October 17, 2013

No. 310123

Wayne Circuit Court

LC No. 11-006523-FC

Before: SAAD, P.J., and SAWYER and JANSEN, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of four counts of first-degree criminal sexual conduct (CSC I) (victim 13 to 15 years old and related to defendant), MCL 750.520b(1)(b)(ii), threatening or intimidating a witness, MCL 750.122(7)(b), and two counts of second-degree criminal sexual conduct (CSC II) (victim 13 to 15 years old and related to defendant), MCL 750.520c(1)(b)(ii). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 30 to 50 years for each CSC I conviction, 5 to 10 years for the conviction of threatening or intimidating a witness, and 5 to 15 years for each CSC II conviction. We affirm.

Defendant argues that his convictions were against the great weight of the evidence. We disagree.

Defendant moved to set aside the jury's verdict on the ground that the complainant's medical records should have been introduced into evidence. However, he did not seek a new trial on the ground that the verdict was against the great weight of the evidence. Accordingly, this issue is not preserved for appeal. *People v Cameron*, 291 Mich App 599, 617; 806 NW2d 371 (2011); *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). We review defendant's unpreserved claim for plain error affecting his substantial rights. *Cameron*, 291 Mich App at 618.

“[I]t is the province of the jury to determine questions of fact and assess the credibility of witnesses.” *Id.* at 616, quoting *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998). Conflicts in the testimony do not typically warrant a new trial. *People v Roper*, 286 Mich App 77, 89; 777 NW2d 483 (2009). We must defer to the jury's verdict unless the testimony contradicted indisputable physical facts or the witnesses were so far impeached that their testimony lost all probative value. *Id.*

Defendant argues that the verdict was against the great weight of the evidence because the complainant lacked credibility. He asserts that the complainant's testimony was inconsistent with regard to her age at the time the sexual abuse occurred. At one point, the complainant testified that the sexual abuse started when her mother, Carolyn McCowan (McCowan), and her father's girlfriend, Laura Nichol (Nichol), moved out in 2009. However, she also repeatedly testified that she was "13 going on 14" when the abuse started. This would have been sometime in 2006.

Defense counsel emphasized this discrepancy in the complainant's testimony on cross-examination. The jury evidently chose to believe the complainant because it convicted defendant of all charges. The credibility of the witnesses is a question for the trier of fact that we will not resolve anew on appeal. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). "[A] jury is free to believe or disbelieve, in whole or in part, any of the evidence presented." *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999).

Defendant next contends that the complainant had a motive to lie about the sexual abuse. But it does not appear that the complainant had any motive to fabricate her allegations at the time she testified in 2012. Indeed, the complainant testified at trial that she still loved defendant and that all she wanted was an apology. Moreover, it was the jail call between Nichol and defendant that prompted the investigation and charges against defendant, not the complainant's allegations. It was exclusively the role of the jury to determine the complainant's credibility. *Cameron*, 291 Mich App at 616.

Defendant additionally contends that the complainant lacked credibility because the house was full of people, none of whom suspected any sexual abuse. However, McCowan and Nichol testified that they did not consistently live at the house in 2009. The complainant's testimony was not so contrary to reason or indisputable physical facts that it lost all probative value. See *Roper*, 286 Mich App at 89.

Defendant also argues that his innocence is proven by the negative results of his tests for sexually transmitted diseases. This argument lacks merit. The complainant's hospital records indicate that she did not have any sexually transmitted diseases at the time defendant was tested. Thus, the fact that defendant's results were negative is irrelevant.

Defendant further asserts that the jury's verdict is unreliable because he was not the donor of the sperm cell found on the complainant's vaginal swab. We cannot agree. It is true that the DNA from the vaginal swabs was consistent with the complainant's DNA only. The test results indicated an absence of DNA from any sperm donor. However, Amber Young, a forensic scientist with the Michigan State Police, explained that any DNA from the sperm cell could have been undetectable. Thus, although the DNA testing did not implicate defendant, it did not exclude him either. In a prosecution for criminal sexual conduct, the complainant's testimony need not be corroborated by physical evidence. MCL 750.520h.

The jury's verdict was not contrary to the great weight of the evidence. We perceive no plain error requiring reversal.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Kathleen Jansen